ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Usage of the Public Switched Network	)	CC Docket No. 96-263
by Information Service and Internet	)	
Service Providers	)	

COMMENTS OF WORLDCOM

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SUMMARY

The new WorldCom, Inc. family of companies -- comprised of WorldCom (the fourth largest facilities-based long distance company in the U.S.), MFS (the largest facilities-based competitive local exchange carrier in the U.S.), and UUNET (the world's largest provider of Internet services) -- welcomes the Commission's initiation of this important proceeding. WorldCom urges the Commission to recognize three important principles to guide its actions in this proceeding:

- o A fundamental economic problem confronting the entire telecommunications industry is the ILECs' current above-cost interstate access charges.
- o Rather than impose unnecessary and counterproductive regulation, the Commission should help expand competitive opportunities and choices in the telecommunications and information services markets.
- o The Commission should reject any unsupported proposals for prescriptive measures to resolve perceived technological or economic problems.

These three principles lead to the need for specific Commission actions. First, as WorldCom explained in its comments in the access charge reform proceeding, the Commission must take steps to ensure that ILEC access charges are driven to long run incremental cost, through a carefully balanced combination of market forces and prescription. Second, to ensure that consumers have competitive choices, all entities should be allowed to select what ILEC services to use, and how best to access the ILECs' local networks, at cost-based rates. In addition, to prevent destroying the successful growth of competitive information services, the Commission should refrain from imposing above-cost access charges or common carrier-type regulation on enhanced services. Finally, any switch congestion allegedly caused by the use of Internet services is not an economic or technical problem, but rather a management problem which is best solved by the creation of robust local service competition.

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WorldCom, Inc. ("WorldCom"), hereby files its comments in response to the Notice of Inquiry ("Notice"), FCC 96-488, issued by the Commission on December 24, 1996 in the above-referenced proceeding.

I. INTRODUCTION

A. The New WorldCom: A Business Background

WorldCom is a premier global telecommunications company, providing its customers with facilities-based and fully integrated local, long distance, international, and Internet services. WorldCom is the fourth largest facilities-based interexchange carrier ("IXC") in the United States. Moreover, following its merger with MFS Communications on December 31, 1996, the new WorldCom now includes the largest facilities-based competitive local exchange carrier ("CLEC") in the United States.

The new WorldCom family also includes UUNET Technologies, Inc., the world's largest provider of Internet services. Founded in 1987, UUNET is widely recognized as the first commercial Internet service provider ("ISP"). UUNET offers a comprehensive range of Internet access options, World Wide Web hosting services, security products, and consulting services to carriers, businesses, professionals, and on-line service providers. UUNET's backbone network utilizes WorldCom and other carrier-provided facilities to terminate in about 750 points of presence ("POPs") throughout the United States and in Canada, Europe, and the Asia-Pacific region, as well as connections to Internet service providers around the world.

WorldCom and its MFS affiliate provide the long distance and local links, respectively, for many ISPs and other enhanced service providers ("ESPs"). In particular, WorldCom plays a significant role in the Internet by providing a sizable portion of the DS-3 backbone telecommunications network that supports the Internet and various ISPs. WorldCom also terminates a significant amount of voice and data traffic that originates on the incumbent local exchange carriers' ("ILECs") networks. Although WorldCom and its customers often use portions of the ILECs' public switched network to carry some of this traffic, WorldCom also competes directly for this business with the ILECs. While many of UUNET's business customers use the public switched telephone network ("PSTN") to connect to UUNET, its high-volume customers also use higher speed private line links.

Together, WorldCom, MFS, and UUNET are playing a major role in the Internet market. In mid-February 1997, for example, WorldCom announced that it would spend $300 million in 1997 to expand and upgrade UUNET's network in order to meet the surging demand for Internet services.[1] This unprecedented expansion will more than quadruple UUNET's available capacity in terms of both backbone bandwidth and dial access capacity. In mid-March,

[1] See Attachment A (Press Release, "WorldCom Announces $300 Million Expansion of UUNET Network," issued February 19, 1997).

UUNET announced that it will offer to its web hosting customers the "one-stop shopping" ability to host web sites at multiple locations around the world.[2] Using this new service, a customer can receive hosting in numerous international locations with a common hardware platform and software configuration.

Most recently, UUNET has announced the deployment schedule for its new Preferred Access service, a dedicated Digital Subscriber Line ("IDSL") service that delivers leased line performance for Internet access at half the price of a fractional T-1 line.[3] By using a simple, data-grade, copper loop, this IDSL-based service bypasses the ILECs' switched voice networks and avoids both the congestion and bandwidth limitations that have plagued many users of other Internet access services. UUNET is the first Internet service provider to make this type of service commercially available nationwide.

WorldCom's unique blend of telecommunications and information services, and its dual relationship as both large customer and significant competitor to the ILECs in several different markets, gives WorldCom a unique perspective on telecommunications policy. The new WorldCom can now approach policy issues not as a stand-alone IXC, or CLEC, or ISP, but rather as a company situated at the center of the rapidly-developing convergence of these and other market segments.

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[2] See Attachment B (Press Release, "UUNET To Introduce Global Web Hosting Services," issued March 10, 1997).

[3] See Attachment C (Press Release, "UUNET Details Nationwide Deployment of IDSL Technology," issued March 12, 1997).

B. The Issues Presented for Discussion in CC Docket No. 96-263

1. The Notice of Proposed Rulemaking

In its Notice of Proposed Rulemaking ("NPRM") on interstate access charge reform issues, the Commission discussed the existing pricing structure for information services, whereby ESPs are able to use ILEC local exchange facilities to originate and terminate interstate traffic without paying interstate access charges. The Commission tentatively concluded that ESPs should not be required to pay interstate access charges "as currently constituted,"[4] and therefore that the current ESP exemption from interstate access charges "should remain in place at this time."[5] The Commission explained that "the existing access charge system includes non-cost-based rates and inefficient rate structures" that the Commission saw "no reason to extend" to "an additional class of users, especially given the potentially detrimental effects on the growth of the still-evolving information services industry."[6] The Commission sought comments on its tentative conclusion to retain the ESP exemption "so long as the existing access charge system remains in place."[7]

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[4] NPRM at para. 288.

[5] NPRM at para. 283.

[6] NPRM at para. 288.

[7] Id. The NPRM also noted that issues related to Internet telephony services were being addressed in a separate proceeding. In particular, the Commission stated that it would not address in this proceeding the question "whether some Internet-based services could conceivably be considered 'telecommunications' under the 1996 Act." NPRM at para. 288 n.390. The Commission also indicated that "other" issues raised in ACTA's pending petition to regulate Internet telephony services will be addressed in a separate order. NPRM at para.

2. **This Notice of Inquiry**

The Commission notes that the development of the Internet and other information services "raise many critical questions that go beyond the interstate access charge system that is the subject of this proceeding."[8] The Commission remarks that it needs to identify "what FCC policies would best facilitate the development of the high-bandwidth data networks of the future, while preserving incentives for efficient investment and innovation in the underlying voice network."[9] The Commission tees up numerous issues, including:

- whether, after complete reform of the interstate access charge system, the Commission should consider "any additional actions relating to interstate information services and the Internet;"[10]

- how switch congestion concerns raised by the incumbent LECs can be addressed, and in particular how FCC rules "can most effectively create incentives for the deployment of services and facilities to allow more efficient transport of data traffic to and from end users;"[11]

- what regulatory barriers at the federal and state level might prevent provision of alternate network access arrangements for ESPs;[12]

- what are the effects of the current system on network usage, incumbent LEC cost-

286 n.385.

[8] NOI at para. 311.

[9] Id.

[10] NOI at para. 312.

[11] NOI at para. 313.

[12] NOI at para. 314.

recovery, and the development of the information services marketplace;[13]

- o whether the Commission should distinguish between different categories of information or enhanced services, and how Internet telephony and other new services affect this analysis;[14] and

- o whether the issues raised in this NOI should be addressed in any existing proceeding, or a new proceeding.[15]

C. Three Important Principles To Guide The Commission

WorldCom strongly urges the Commission to recognize and adopt three important principles to guide its actions in this proceeding. Each of these principles highlights the need for policymakers to focus their regulatory authority on ways to encourage and maximize competitive forces, and to refrain from imposing unnecessary regulatory fixes on the industry.

First, a fundamental problem confronting the entire telecommunications industry is an economic one, namely, that the ILECs' current interstate access charges are priced far too high above actual cost. As will be discussed in Part II below, the Commission must take steps to ensure that access charges are driven to cost -- through a careful combination of market forces and selective prescription -- so that, in the near future, no entity will be required to pay ILEC access fees in excess of long run incremental cost.

Second, expansion of competitive opportunities and choices for service providers

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[13] NOI at para. 315.

[14] NOI at para. 316.

[15] NOI at para. 317.

and end user customers alike, rather than regulation, is always the preferred approach to take in any market, including telecommunications and information services. As will be explained in Part III below, the Commission should encourage the market to work by making sure that consumers have an optimal number of competitive choices, both for telecommunications service providers and for the services themselves. In particular, after access charge reform has been undertaken, all entities should be allowed to freely pick and choose what ILEC services to use, and how best to access the ILECs' local networks, at cost-based rates. The Commission also must encourage new technologies and services to flourish, and refrain from adopting any regulatory policies, such as above-cost ESP access charges or regulation of enhanced services, that would unnecessarily impede the growth and success of competitive information services.

Third, after careful scrutiny the Commission should reject unsupported claims by the ILECs for certain forms of deregulation as a way of alleviating some perceived technological or economic problem. In particular, as discussed in Part IV below, any switch congestion allegedly caused by the public's increasing use of Internet services is not an economic problem, or even a technical problem, but rather a management problem. Again, the creation of sustainable and robust competition in the local exchange will help solve that particular problem.

II. THE COMMISSION'S CONTINUING GOAL SHOULD BE TO CREATE A COST-BASED PRICING REGIME FOR ALL DOMINANT SERVICE PROVIDERS

The purpose of this NOI is to help the Commission devise and implement rational regulatory and pricing policies governing the information services marketplace. Toward this end, the Commission first asks whether, after complete reform of the interstate access charge system, the Commission should consider "any additional actions relating to interstate information services and the Internet."[16]

It is apparent that the 1996 Act has made obsolete the old ways of pricing usage of the ILECs' local exchange network. The walls separating interexchange access and local exchange service, and the pricing of these services, have been created and maintained by monopoly carriers abetted by regulators, not the marketplace.[17] Such walls now are irrelevant. In a competitive market, of course, prices would tend toward long run incremental cost, and therefore, the preferred cost standard for establishing ILEC rates should be total service long-run incremental cost ("TSLRIC"), plus a reasonable contribution to forward-looking joint and common costs. Economists generally agree that a forward-looking, incremental costing standard is the best reflection of the actual cost of originating and terminating telecommunications traffic.[18] Indeed, adoption of an approach based on TSLRIC is fully consistent with the FCC's

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[16] NOI at para. 312.

[17] See, e.g., Comments of LDDS WorldCom, CC Docket No. 96-98, filed May 16, 1996, at 65-68, 79-80.

[18] See e.g., Letter from Bruce Owen, Former Director, Economic Policy Office, Antitrust Division, Department of Justice, to Reed Hundt, Chairman, Federal Communications Commission, dated December 2, 1996 (Five former Chief Economists of the Antitrust Division support forward-looking costing of local interconnection rates).

position in its local interconnection proceeding,[19] as well as the Joint Board's universal service recommendation,[20] and one proposed approach in the Commission's reform of interstate access charges.[21]

WorldCom consistently has supported the Commission's position on utilizing forward-looking, incremental cost methodologies to govern the ILECs' provision of local exchange and exchange access services.[22] In the access charge proceeding, WorldCom has proposed a pragmatic plan for access reform, one that relies to a large extent on market forces where possible, while at the same time requiring the Commission to take limited prescriptive actions to lower certain charges to economic cost. WorldCom believes that local competition is the best way to discipline the ILECs' access rates, and thereby to achieve long-term access reform. As a result, the necessary predicate to the success of WorldCom's plan is the full

[19] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, at para. 679 (released August 8, 1996) ("Local Competition Order").

[20] In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 96J-3, Recommended Decision, at para. 270 (released November 8, 1996) ("Joint Board Universal Service Recommendation").

[21] In the Matter of Access Charge Reform, CC Docket No. 96-262, FCC 96-488, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, at paras. 220-222 (released December 24, 1996) ("Access Charge Reform Notice").

[22] See e.g., Comments of LDDS WorldCom, CC Docket No. 96-98, filed May 16, 1996; Comments of WorldCom, CC Docket No. 96-45, filed December 19, 1996; Comments of WorldCom, Inc., CC Docket No. 96-262, filed January 29, 1997 "WorldCom Access Charge Reform Comments"); Reply Comments of WorldCom, Inc., CC Docket No. 96-262, filed February 14, 1997 ("WorldCom Access Charge Reform Reply Comments").

implementation of local competition. Viewed in this way, local competition is necessary to achieve access charge reform, while access charge reform is necessary to achieve effective local competition. The Commission must endeavor to get both elements of this linkage right.

In brief, WorldCom's phased access charge reform plan allows competition from other entities to incent the ILECs to reduce certain charges closer to cost. For those discrete access rate elements that will not be subject to competition anytime soon, such as terminating access, the Commission would direct that rates be lowered to cost. Should this mix of market-based and prescriptive reductions not occur within a reasonable time, based on a failure of local competition to develop, the Commission would hold in reserve the "stick" of broader prescription of access rate reductions.[23]

Finally, WorldCom stated in its access reform comments that ESPs should not be required to pay the above-cost access charges currently imposed by the ILECs.[24]

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[23] See Attachment D ("WorldCom, Inc. Plan for Pragmatic Access Reform," CC Docket No. 96-262, dated March 1997).

[24] WorldCom Access Charge Reform Comments, at 93.

III. THE COMMISSION SHOULD NOT IMPOSE SUBSIDY-RIDDEN INTERSTATE ACCESS CHARGES, OR ANY COMMON CARRIER-TYPE REGULATION, ON PROVIDERS OF INTERNET OR OTHER ENHANCED SERVICES

A. ESPs Should Continue To Be Permitted, But Not Required, To Utilize Interstate Access Arrangements

1. ESPs Should Not Be Required To Pay Current Subsidy-Ridden Access Charges

WorldCom has long been an avid proponent of creative uses of advanced technologies to meet the diverse and evolving communications needs of the American public. In particular, WorldCom supports the unfettered growth and success of the Internet "network of networks." Indeed, as mentioned above, WorldCom is playing a major role in bringing the many benefits of the Internet to its commercial, residential, and carrier customers.

Information services such as the Internet enjoy increasingly widespread use, based in large part on the favorable regulatory environment provided by the federal government. At present, information services are classified by the FCC as "enhanced services," and hence are exempt from a wide panoply of federal regulations applicable to providers of "basic services" such as long distance carriers.[25] First, the Commission correctly classified ESPs as users, not common carriers, and thus not subject to common carrier-type regulation. More recent FCC decisions eliminate most filing and reporting requirements for nondominant carriers. The Commission should not change its view that these types of regulatory requirements are unnecessary and counterproductive when applied either to non-common-carriers or to

[25] 47 C.F.R. § 64.702(a).

nondominant carriers.

Second, the Commission also has decided not to impose certain charges on providers of information services. In particular, the FCC's Part 69 rules require IXCs to pay interstate access charges to the ILECs in order to originate and terminate long distance traffic over ILEC networks.[26] While some portion of these access charges is intended to compensate the ILECs for use of their local infrastructure, a sizable amount also supports other purposes, including local residential rates, universal service programs, and other implicit subsidies, or consists of non-cost-based ILEC "expenses." The Commission has long reasoned that applying traditional access charges, with their inefficient usage-sensitive rate structure and non-cost-based rate levels, on ESPs would be detrimental to the growth of the still-evolving information services industry.

Today, as a result of the basic/enhanced distinction and the ESP exemption, some parties apparently believe that the Commission is faced with a disparity. While traditional providers of long distance voice services currently are regulated and pay above-cost, usage-sensitive interstate access charges, enhanced service providers currently are unregulated and pay state-tariffed, often flat-rated, end user business rates. The question before the Commission is what, if anything, to do about this apparent disparity.

WorldCom believes that the answer, in the short term, is to do nothing. First, WorldCom strongly supports the Commission's conclusions that most ESPs are not common

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[26] See 47 C.F.R. § 69.01 et seq. (1995).

carriers, but are in fact end users. Under current rules, end users may, but are not required to, purchase access services from ILECs. Generally, IXC purchasers of access receive features and functionalities that ESPs do not now use. In many cases, ESPs either do not need those features and functionalities, or else have developed more cost-effective ways to acquire those same or similar features or functionalities.

As indicated above, WorldCom also supports the Commission's decision not to impose on ESPs interstate access charges in their current, subsidy-ridden form.[27] The access charge scheme was designed primarily to continue providing subsidies from long distance to local service in the old Bell System monopoly. For the present time, then, the Commission should retain the current rule that ESPs are not common carriers and, therefore, are not required to purchase either intrastate or interstate access.

2. New Cost-Based Federal Access Option Should Be Developed For ESPs

As explained in Part II above, WorldCom believes that the Commission must comprehensively reform the LECs' interstate access charge system by bringing some of those charges down to economic cost immediately, and subjecting the other components to immediate competitive pressure to achieve the same result. As part of the process of reforming interstate access charges, all users of interstate access services eventually should pay the same cost-based interconnection rates that other users of the public switched telephone network would pay.

[27] WorldCom Access Charge Reform Comments, at 93.

WorldCom believes that, in the long run, as access reform is taking hold, ESPs may find cost-based interstate access to be an attractive alternative to their present service arrangements. Currently, many ESPs subscribe to thousands of local telephone lines to allow their subscribers to access their information services with a local telephone call. These ESPs obtain end user business lines, taken from the state tariffs of local exchange carriers, in order to make their information services available to the public. By using these intrastate business lines, both ESPs and their customers in effect have been avoiding paying the usage-sensitive, interstate access charges which are now part of the federal access charges that long distance carriers are required to pay.

In the early 1990s, ESPs began pressing the Commission to allow them to take federally-tariffed access arrangements that were cost-based and designed for the needs of ESPs. By agreeing to consider taking interstate access arrangements for the first time, ESPs were hoping to be able to take advantage of advanced federally-tariffed network functionalities being offered by the LECs under the rubric of the FCC's Open Network Architecture ("ONA") policy. In a 1991 decision, the Commission decided otherwise, finding that a cost-based interstate access arrangement designed for ESPs would be "inconsistent with our current rate structure," and that there was no reason to deviate from that rate structure "for one group of access users."[28] As a result, the ESP exemption from interstate access charges remains in place to this day.

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[28] Amendment of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Report and Order, 6 FCC Rcd 4524, 4535 (1991).

By creating a cost-based federal interconnection arrangement that ESPs could choose to utilize, the Commission will for the first time allow ESPs to gain access to an array of advanced, federally-tariffed network features and functionalities that they have sought for many years. Any federal access arrangement that is created for data services must be unbundled to the maximum extent possible, stripped of all superfluous features and functionalities not desired or used by ESPs. It also must include flat-rated charges for all non-traffic sensitive facilities. Nothing in WorldCom's proposal would require ESPs to change their current method of operations, or to abandon their use of state-tariffed business lines.

It is important to understand that most ESPs now appear to be paying their full share of the cost of the ILEC services they use. For years, the ILECs have insisted that local business rates are set well above costs to subsidize local residential rates. If this is the case, then ESPs already are paying more than their fair share of cost, in addition to local subsidies. If, on the other hand, business rates are set below cost, then the whole premise of universal service subsides is simply wrong. The ILECs cannot have it both ways, arguing here that ESPs are paying too little and arguing in the universal service proceeding that businesses pay too much. ILECs contradict themselves further by stimulating the demand for their own ISPs' activities. Nonetheless, the Commission still can use this opportunity to advance its valid public policy goals to promote competition (not competitors) by forcing ILECs toward more rational and cost-based pricing.

Of course, as local competition begins to intensify, ESPs will have the additional option of choosing different service providers altogether. A large number of ESPs already have decided to use the services offered by WorldCom and other CLECs, rather than those of the ILECs. As will be explained in Part IV below, the Commission should encourage such competitive choices for ESPs and other consumers of local service.

B. The Commission Should Not At This Time Attempt To Regulate ESPs, Or Create New Regulatory Distinctions Between ESPs And Carriers

The NOI asks whether the Commission should distinguish between different categories of information or enhanced services. The Commission also seeks comment on how to apply the current distinction between basic telecommunications services and enhanced information services to Internet telephony and real-time streaming audio and video over the Internet.[29]

WorldCom fully supports the continued maintenance of the current basic/enhanced service distinction. As explained above, this distinction has successfully prevented government's common carrier-type regulation of enhanced services, and allowed that segment of the market to grow and thrive in recent years. The Commission already has decided that enhanced services as defined in its rules are a subset of information services as defined in the 1996 Act.[30] WorldCom believes that the Commission should not try to discern and police more and different

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[29] NOI at para. 316.

[30] See Implementation of the Non-Structural Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, First Report and Order, issued December 24, 1996, at paras. 102-107 ("Nonstructural Safeguards Order").

regulatory distinctions between different types of ESPs, or between ESPs and other users of the local network. It is extremely important to maintain this basic/enhanced distinction to prevent unnecessary and potentially burdensome regulation. Moreover, WorldCom urges the Commission to carefully monitor and, if necessary, preempt any states that seek to impose common carrier-type regulation on enhanced services.

WorldCom believes that, for now, the Commission should regard Internet telephony no differently than other data traffic, and therefore the Commission should not once again try to distinguish between enhanced services and basic services. The industry does not need a Computer Inquiry IV.[31] The simple answer to the seeming dilemma posed by a service like Internet telephony is not to force all providers of the service to pay the current level of access charges paid by IXCs, or to regulate all such providers as common carriers. The answer is to push all charges paid by IXCs today down to cost-based levels, through a combination of market-based and prescriptive measures, as proposed in WorldCom's access charge reform

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[31] In its comments concerning the ACTA petition, WorldCom strongly opposed any common carrier-type regulation of Internet telephony services. However, WorldCom pointed out that, depending on the service and network configurations, certain types of Internet telephony services may in fact be properly classified as basic telecommunications services. See Comments of LDDS WorldCom, RM No. 8775, filed May 8, 1996; Reply Comments of LDDS WorldCom, RM No. 8775, filed June 10, 1996. WorldCom's comments in the Commission's universal service proceeding also showed how certain Internet telephony services appear to meet the three-pronged definition of "telecommunications service" in the 1996 Act, and that, at minimum, these services should be required to contribute their fair share of universal services funding. See Comments of LDDS WorldCom, CC Docket No. 96-45, filed April 12, 1996, at 16; Reply Comments of LDDS WorldCom, CC Docket No. 96-45, filed May 7, 1996, at 15-16.

comments. Then, and only then, would ESPs likely choose to subscribe to ILEC-provided access services.

IV. THE COMMISSION SHOULD RELY ON COMPETITION, NOT REGULATORY FIXES, TO GOVERN HOW ESPs TAKE LOCAL SERVICE FROM THE ILECs

The Notice next turns to a series of interrelated questions concerning the current technological state of the ILECs' local networks. The Commission asks how switch congestion concerns raised by the ILECs can be addressed, and in particular how the Commission's rules "can most effectively create incentives for the deployment of services and facilities to allow more efficient transport of data traffic to and from end users."[32] The Commission also seeks comment on what regulatory barriers at the federal and state level might prevent provision of alternate network access arrangements for ESPs.[33]

A. Alleged Network Congestion Problems Are Best Dealt With By Technology And Market-Based Solutions, Not Additional Regulatory Prescriptions

WorldCom believes that any purported network traffic problems created by Internet growth should be addressed by pursuit of technological means in the marketplace, rather than regulatory strictures at the Commission. Since the opening of this docket, a number of telecommunications companies (including WorldCom) have announced products and services

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[32] NOI at para. 313.

[33] NOI at para. 314.

which are intended to help route Internet and other data traffic around ILEC bottlenecks. These efforts are being buttressed by other dramatic enlargements of the bandwidth of the physical backbone of the Internet, such as wireless conduits and ADSL technology. Together, these types of technological solutions will provide the best hope of solving any alleged PSTN congestion problems.

Initially, WorldCom is not convinced that the ILECs' claims about network and switch congestion have much credence. In order to understand the ILECs' claims, the "problem" needs to be broken down into its three potential constituent parts: originating switching, terminating switching, and ISP transport.

The end user originating an ISP call utilizes the subscriber loops and local switch typically to place an intraLATA (either intraoffice or interoffice) call to her ISP. It is highly doubtful that congestion exists in the loop. In fact, the ILECs typically seem to have an ample number of loops in place.[34] Moreover, new technologies (such as WorldCom's IDSL product) are greatly expanding the capacity of existing copper loops. Similarly, the ILECs' local switches typically are engineered based on the number of lines, expected call attempts per busy hour, and call holding time. Some observers have cited holding time as the reason for congestion, but in

[34] For example, Ray Smith, CEO of Bell Atlantic, recently remarked that even though sales of secondary lines has surged by more than 50 percent due to Internet usage, Bell Atlantic has generated substantial profit because "we were able to provision new lines and services from idle capacity in an existing plant." Presentation of Ray Smith, Chief Executive Officer, Bell Atlantic, at Merrill Lynch Telecommunications CEO Conference, March 19, 1996.

originating offices Internet usage is likely to be only a small portion of busy hour demand.

At the terminating end, subscriber loops used by ISPs again should pose no problem because ISPs typically rely on multiline DS1s. However, a large ISP could cause some congestion if the ILECs' terminating switches are engineered in an inadequate manner. This congestion could be alleviated in several ways. For example, the ILEC could increase capacity in its office, or install direct trunks from remote offices to the ISP. In any event, resolving this type of congestion is the ILEC's common carrier obligation, not the users' dilemma. It is a peculiarly monopolistic perspective to complain about having too much business.

Finally, the ISPs' own network architecture consists of the connections between the ISPs' servers and the Internet backbone network. In most cases, ISPs do not use the public switched network for these connections, but rather commonly utilize T-1s and higher speed special access connections. Because these solutions bypass the ILEC switches (and often their facilities) altogether, there should be little to no effect on the ILECs' networks.

It appears, therefore, that the network congestion problems claimed by the ILECs either do not exist, or can be corrected by the ILECs themselves. A third possibility also exists, one which may help identify the ILECs' true underlying motivation. Some ILECs blame their congestion problems on the prevalence of flat-rated local services. While local rate structures generally have not been this Commission's concern, the Commission should not fall prey to the ILECs' thinly-veiled attempt to receive authority to charge usage-sensitive local rates. The ILECs cannot be allowed to utilize this back door method of forcing ESPs to take grossly inflated exchange access services, instead of the basic local services those end users are utilizing today with great success. Thus, given these conclusions, WorldCom urges the Commission to not allow the ILECs to use the threat of network and switch congestion as justification to collect inflated interstate access charges from ESPs.

Indeed, even if the switch congestion problem does exist in some form -- which WorldCom believes has not been proven to date -- the answer is not the immediate imposition of interstate access charges on all ESPs. The ILECs already receive considerable ESP revenues to support the building and maintenance of increased switch capacity. Further, it must be noted that the ILECs are actively promoting the sale of second lines to residential customers, and multiple lines to businesses, both of which are used extensively by consumers to access ISP services, and (coincidentally) are highly profitable to the ILECs. Moreover, the ILECs' repeated concerns about switch congestion do not appear to prevent them from becoming very active providers of Internet access services themselves -- even where (in the case of the RBOCs) it seems unlawful to do so.[35]

In short, what is needed is a market-based solution, not a regulatory fix. With the proper competitive pressures from entities such as WorldCom, the Commission does not

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[35] As the Commission has correctly concluded, the 1996 Act prohibits the RBOCs from providing in-region interLATA information services until they have satisfied the requirements of Section 271. See Nonstructural Safeguards Order, at para. 127. Further, after the RBOCs have satisfied Section 271, they may provide such services only through a Section 272 affiliate. Id. To WorldCom's knowledge, FCC staff has responded neither to outstanding petitions for review, nor initiated any reviews on its own, to assure that the RBOCs are complying with this element of federal law.

need to undertake any significant rule changes to create incentives for ILECs to provide more efficient data transport. The ILECs already should have significant incentives to migrate Internet traffic out of the analog circuit switching environment to the newly evolving packet switching environment. ILECs can use digital services in the end office, such as digital private lines, SMDS, frame relay, or ATM, to route calls to the ISPs. Imposing access charges on ESPs will not create any better incentives for the ILECs to provide such services.

On the end user side, the ILECs need to install equipment at the central office to pull out data traffic and run it through separate, more efficient data networks. Indeed, as mentioned above, one such technological solution being offered by WorldCom is IDSL, which allows the end user to access the network at much higher data rates.

B. The Commission Should Encourage Direct Competition With The ILECs By Removing Unnecessary Regulatory Barriers

Rather than forcing ESPs to pay charges to monopoly ILECs, the Commission should take immediate steps to create competition, and allow the market to provide solutions to any perceived problems. The various entry avenues granted by the 1996 Act -- resale of ILEC services at wholesale rates, use of unbundled network elements ("UNEs"), and facilities-based entry -- must be fully implemented by the ILECs in order for sustainable competition to begin.[36] The Commission obviously has been granted a central role to play in the success or failure of local competition. In particular, the Commission's vigilant monitoring of the ILECs'

[36] See 47 U.S.C. §§ 251(c)(2), (c)(3), (c)(4).